REMARKS

Claims 1-35 were previously pending in this application. Claims 1-7, 9, 12, 13, 15, 16, and 25 have been amended. As a result, claims 1-35 are pending for examination with claims 1, 12, and 25 being independent claims. No new matter has been added.

Examiner Interview

Applicant wishes to thank Examiner Lee and Examiner Thai for the courtesies extended during the Interview of December 17, 2007. In the Interview, Applicant's Representative and Examiners Lee and Thai discussed the rejection of claim 12 under 35 U.S.C. §101 and proposed amendments to traverse the rejection. Applicant's Representative also discussed the patentability of the claims over the cited references and proposed amendments that would further describe the Applicant's contribution to the art. Although agreement was not reached, the Examiners Lee and Thai agreed in principal, and requested that Applicant's Representative submit the amendment for further consideration.

Accordingly, Applicant respectfully submits this amendment with the following remarks which outlines the discussion between Applicant's Representative and the Examiners.

Oath/Declaration

The Office Action states that the oath or declaration is defective. The Office Action requires a new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date. The oath or declaration is defective because: It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

The declaration filed on 4/16/2004 states that, "I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, §1.56." A new declaration is being submitted herewith with "material to the examination" changed to –material to the patentability--.

Double Patenting Rejection

In paragraphs 13 and 14 of the Final Office Action, claims 1, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24, 25, 26, 27, 28, and 31 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, and 32, respectively, of copending Application No. 11/049,399.

Applicant respectfully request the provisional rejection be held in abeyance until allowable subject matter is determined.

Rejections Under 35 U.S.C. §101

The Office Action rejected claims 12-24 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter, as the claims only consist of abstract ideas. In response, Applicant has amended claims 12, 13, 15-17 to further describe Applicant's contribution to the art. Claims 12-24, as amended recites physical structure, and Applicant respectfully traverses the rejection.

Rejections Under 35 U.S.C. §102

The Office Action rejected claims 1, 5-8, 11, 25-28, 34, and 35 under 35 U.S.C. §102(e) as being anticipated by Metke, U.S. Patent No. 6,565,435 B2, (hereinafter Metke).

Metke discloses a method of permitting a player to play an ***amusement game*** at a given amusement game location free of charge. (Abstract). Metke does not teach or suggest a wagering game. In the Office Action mailed August 1, 2007, Examiner has admitted that Metke does not teach or suggest a wagering game of chance, (See Office Action p. 6, para. 10), and Metke does not teach or suggest a wagering game of skill (See Office Action, p. 10, para. 11).

Claim 1, as amended, recites a method for conducting a game. The method comprises acts of providing for primary method of entry of at least one player in the game, providing, to the at least one player, an alternative method of entry (AMOE) to the game, and executing the game for the at least one player, wherein the game comprises a ***wagering game***. Metke does not anticipate claim 1, as amended.

Accordingly, withdrawal of this rejection is respectfully requested. Claims 5-8, and 11, depend from claim 1 and are allowable for at least the same reasons.

Independent Claim 25

Claim 25, as amended, recites a computer-readable medium having computer-readable signals stored thereon that define instructions that, as a result of being executed by a computer, instruct the computer to perform a method for conducting a game, the method comprising acts of providing for primary method of entry of at least one player in the game, providing, to the at least one player, an alternative method of entry (AMOE) to the game, and executing the game for the at least one player, wherein the game comprises a wagering game.

Metke does not anticipate claim 25, as amended. In particular, Metke does not teach or suggest "a wagering game." Rather, as discussed above, Metke provides a method for playing an ***amusement game***. (Please see Abstract).

Accordingly, withdrawal of this rejection is respectfully requested. Claims 26-28, 34, and 35 depend from claim 25, and are allowable for at least the same reasons.

Rejections Under 35 U.S.C. §103

The Office Action rejected claims 2, 4, 9, 10, 12-20, 22-24, 29-31, and 33 under 35 U.S.C. §103(a) as being unpatentable over Metke in view of Itkis, et al., U.S. Publication No. 2003/0171986 A1, (hereinafter Itkis). Claims 2, 4, 9, and 10 depend from claim 1, and are allowable for at least the reasons discussed above with respect to independent claim 1. Claims 29-31, and 33 depend from independent claim 25, and are allowable for at least the reasons discussed above with respect to independent claim 25.

Iktis, et al. is directed to a linked promotional bingo game. Itkis attempts to create an appearance of a live linked bingo game being conducted simultaneously in a number of participating commercial establishments. (Para. 0013). In each of the participating establishments, a self-service vending kiosk prints and issues free game tickets imprinted with bingo cards to patrons who swipe their player-tracking cards through the kiosk's magnetic card reader in order to obtain a free game ticket. (Para. 0013). The game of Itkis is designed to provide commercial establishments, such as bars, pubs, and clubs with an effective promotional tool capable of attracting patrons while extending partons' visits. (Para. 0006).

Itkis teaches that in an a majority of jurisdictions, bars and similar establishments are ***legally precluded from selling*** bingo cards to patrons. (Para. 0003). Itkis describes an object of the invention is to provide such games in a legally permissible manner. (Para. 0009). Itkis

further describes another object of the present invention is to attract patrons by offering them ***free*** promotional games with large prizes. (Para. 0007). Another object disclosed is to provide funding for such ***free*** promotional games from commercial sources. (Para. 0010). Itkis teaches that the objects of the present invention are achieved by conducting linked large-prize bingo games simultaneously ***at no cost*** to patrons of the establishments and in compliance with free sweepstakes laws and regulations. (Para. 0012, emphasis supplied).

In summary, Itkis, et al. discloses only a free method of entry into a linked promotional bingo game, i.e. the free method of entry whereby a participant obtains a ticket to play from a kiosk. (Please see e.g. Para. 0013; and Para. 0020). In addition, Itkis teaches that the free method of entry ***is the only method that satisfies the objects of the invention***, which include deriving sources of funding for the free game. (Please see e.g. para. 0012).

Thus, Itkis teaches away from the combination proposed by the Examiner, as Itkis emphasizes that ***any other means of entry*** beyond a free method would run afoul of gaming law. Moreover, if one were to combine Itkis and Metke, the combination would defeat the stated objectives of providing ***only free games*** to comply with gaming law described in Itkis (Please see e.g. para. 0003, 0007, 0009, and 0012).

In addition, the Office Action alleges, that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the amusement video games of Metke with a bingo wagering game of chance with fixed odds of winning in order to create a promotional event directed towards fans of bingo and gain a wider audience." (Office Action, p. 7). Applicant respectfully disagrees with this assertion. There does not appear in either reference evidence that such a combination would be in fact desired, or accomplish an increase in audience, as alleged. The allegation of obviousness rest on a number of assumptions, some of which include the assumption that the population of amusement game players are different than the population of bingo game players. Another assumption is that the replacement of arcade games with bingo styled games would be desired by a wider audience. There does not appear to be any evidence in the record to support these assumptions. Thus the proposed motivation to combine these references is not supported.

Accordingly, withdrawal of this rejection is respectfully requested.

Claims 3 and 32 were rejected under 35 U.S.C. 103(a) as being unpatentable over **Metke [sic]** in view of Langan, U.S. Patent No. 5,782,470, (hereinafter Langan).

Langan is directed to a sweepstakes-type game in which pre-printed game cards are distributed to contestants which permit the contestants to predict the performance of selected players prior to an athletic event and which will reveal winning contestants and associated prizes based upon the geometric arrangement and/or point value of correct positions. (Abstract). The games cards may also be made available for sale or given away in commercial outlets at which games, novelty items, or other sweepstakes-type game cards are available. (Col. 4, lines 27-30).

In summary, the sweepstakes-type game of Langan may be offered as a pay for entry game ***or*** a free entry game. Langan does not teach or suggest providing the two methods of entry in one game. (Please see Col 4, lines 27-30). Thus, Langan teaches away from the combination of references as proposed by the Examiner.

One skilled in the art would not be motivated to combine the teachings of Metke and Langan as suggested by the Examiner. Metke teaches for amusements games an additional free method of entry, however, Metke provides no motivation to apply such teaching to wagering games, and, other references cited by the Examiner indicate that one skilled in the art would not consider such a combination. (See e.g. Itkis – teaching that games including payment methods of entry are prohibited by gaming law (see e.g. Itkis, para. 0003)). Langan itself teaches away from the combination proposed by the Examiner. Langan teaches that its game of skill may be provided in two mutually exclusive ways, the first a pay method of play, and the second a free method of play. (Please see Col. 4, lines 27-30). The separation of these methods of entry reflects the understanding of those of skill in the art that free methods of play make such games easier to comply with gaming law, and for example, pay to play wagering games must be sold at specific locations. (Please see e.g. Col. 17, lines 40-41). Thus one skilled in the art would not look to modify Metke with Langan, and therefore, the proposed combination is improper.

Accordingly, withdrawal of this rejection is respectfully requested.

Claim 21 was rejected under 35 U.S.C. 103(a) as being unpatentable over Metke as modified by Itkis, and in further view of Langan.

As discussed above with respect to Claims 2, 4, 9, 10, 12-20, 22-24, 29-31, and 33, the combination of Metke and Itkis is first improper, second, the alleged combination is taught away from by the references, and third, the combination would defeat the stated objectives of Itkis, if

combined. As discussed with respect to Claims 3 and 32, Langan teaches away from any combination with Metke. Neither problem is resolved by the addition of the other reference to the proposed combination.

Accordingly, withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, reconsideration is respectfully requested. This application should now be in condition for allowance; a notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50/2762.

Respectfully submitted,
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